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*Control of the Market: A Legal Solution of the Trust Problem.*

By BRUCE WYMAN. (New York: Moffat, Yard and Company. 1911. Pp. vii, 282. \$1.50.)

*Corporations and the State.* By THEODORE E. BURTON. (New York: D. Appleton and Company. 1911. Pp. xvi, 249. \$1.25.)

Professor Wyman's book should rank easily as the most important recent contribution to the discussion of the trust problem. If only for its careful and authoritative statement of the established safeguards which the law has thrown around the institution of free competition it would be welcomed. But even more valuable is its subtle and suggestive analysis of tendencies and possibilities in the future development of the law of the market.

The legal justification of the preservation of free competition is, as Professor Wyman clearly shows, merely the fact that free competition is generally accepted as socially desirable. So far as the law now recognizes a *prima facie* right in the matter, it is not the right to compete, but the right of a business man to pursue his calling without hindrance or disturbance. "Fair competition," despite its disturbance of acquired custom and trade relations, is permitted as a matter of public policy, but "unfair competition" finds no such ground of tolerance. Competition essentially malicious in intent, or based upon fraud or intimidation, or upon false or libelous statements, will not, for example, be permitted. But most important in relation to present problems is the fact that forms of competition which are permissible when used by individual firms may be illegal when used by combinations. Price discriminations, factors' agreements, refusals to deal with wholesalers who sell to competitors, and similar methods are permitted the individual trader, but such practices give to combinations an undesirable amount of power and facilitate monopolization. As in the law of conspiracy, it is not true that what one man may legally do any number of men banded together can do with equal legality. It is a matter where delicate discriminations as to the economic effects of particular practices, rather than sweeping rules of logic, must govern.

It is unfortunate that in his discussion of labor combinations Professor Wyman seems to bind himself by rules of logical consistency as rigid as those which he discountenances. Surely, if it is all a matter of public policy, it should be as easy to discrimin-

ate between what different kinds of combinations may do as between what a combination and what an individual may do. If competition has no *prima facie* case in court, why should efforts to eliminate wage competition (as by the closed shop) be pronounced necessarily and inherently illegal? Professor Wyman's conclusions here seem to rest on his statement that "The public wants the best services that can be gotten at the lowest wages which will be accepted." This seems an amazingly weak foundation on which to build a structure of "public policy."

The common law, then, Professor Wyman concludes, is adequate to the task of preventing the growth of monopoly power, except where the monopoly rests upon some secure basis of natural advantage. In this latter case the only possibility is regulation through positive law, and to this end Professor Wyman urges an extension of the law of public callings so as to cover all "virtual monopolies." The possibility of such an extension seems to be more or less bound up with the validity of Professor Wyman's well-known thesis that the law of public callings had its genesis in the necessity of regulating virtual monopolies. His argument for this view is fairly convincing, although he does not take into the account Professor Freund's competing interpretation of the same facts in the early history of the law of public callings. But the author's brief for regulation will probably meet with the approval of most economists, as will his statement that "these occasional decisions, in recent years, by which the dissolution of some one great corporation is attempted in turn, are as futile as the anarchist's bomb," although this seems hardly consistent with his explicit approval of the Sherman anti-trust law as at present interpreted and administered. In other places, too, the book seems to be not altogether consistent. Nor do all the cases cited seem appropriate to the rubrics under which they are placed. But despite these indications of hasty putting together, the book is in general most cogently reasoned. No student of the problems with which it deals can afford to neglect it.

Six lectures delivered at the University of Pennsylvania and an additional chapter on the Standard Oil and American Tobacco Company cases make up Senator Burton's book. It is an elementary, judicial, and readable account of present-day corporation problems. The first chapter, on the "Origins of private

corporations" is the weakest in the book and is not altogether accurate. If Roman analogues to the modern business corporation must be discussed in a popular treatise, they can be found better in the *societates publicanorum* than in the *collegia*. The description of the development of the corporation in mediaeval and modern times is written without knowledge of the lines of descent which modern scholarship has pointed out.

Nor are the other chapters free from errors of fact. It is not true that the only power of the federal government over interstate commerce is derived from the commerce clause of the constitution (p. 63); that corporations having federal charters would be responsible to the rules and regulations of but one authority (p. 67); that a central bank could arbitrarily "control" the rate of interest without reference to the supply of loanable funds in different parts of the country (p. 90); that interest on deposits is the cause of the call loan system (p. 93); that corporations own between three fifths and two thirds of the total wealth of the United States (p. 99); that a corporation, if not a holding company, could in all cases legally buy the properties of competing companies (p. 112); that (under present constitutional interpretations) the profits of all kinds of corporations could be limited by law (p. 145). But the discussions of the nature of combinations in the United States and in Europe, the defects of our corporation laws, the holding company, the recent decisions under the Sherman law, and related topics, are marked in general by a rare degree of insight and discrimination. There is no book of similar compass which furnishes the general reader a better account of the problems relating to the control of corporations and combinations.

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*Private Corporations.* By HORACE LAFAYETTE WILGUS. (Chicago: The La Salle Extension University. 1911. Pp. 194.)

Under this title are reprinted from volume eight of a series on *American Law and Procedure*, chapters on the general nature, the creation, the body corporate, and the dissolution of the corporation. The point of view is legal; the conclusions are supplemented by citations to important cases and reference to historical origins. It is interesting to note that Mr. Wilgus includes con-